IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.791 of 2001

P.Vinodh .. Appellant/Complainant

Vs.

K.Vivekanandan .. Respondent/Accused

Prayer:- This appeal filed under Section 378 of Crl Procedure Code has been preferred against the judgment dated 9.4.2001 made in C.C.No.26 of 1998 on the file of the Judicial Magistrate No.II, Coimbatore.

For Appeal :Ms.S.Thamizharasi

For Respondent :Mr.L.Mouli

JUDGMENT

This appeal emanates from the judgment of the trial Court in C.C.No.26 of 1998 on the file of the Judicial Magistrate No.II, Coimbatore.

2.A private complaint was preferred by the complainant under Section 200 of Cr.P.C., for an offence under Section 138 of the Negotiable Instruments Act against the accused on the ground that a cheque drawn by the accused on 2.9.1997 for a sum of Rs.1 lakhs in order to discharge a loan of Rs.2,50,000/- borrowed under a promissory note dated 10.3.1997, when presented in the bank for collection, the same was dishonoured on the ground that there was no sufficient funds in the account of the drawer. The complainant had issued notice on 12.9.1997, which was received by the accused, and a reply was also sent by the accused.

3.After taking the sworn statement of the complainant, the complaint was taken on file by the learned Judicial Magistrate-II, Coimbatore, after taking cognizance of the offence. The accused appeared before the trial Court on summons and copies under Section 207 of Cr.P.C., were furnished to the accused and when the offence was explained to the accused and questioned the accused pleaded not

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guilty. On the side of the complainant P.W.1, complainant and P.W.2, the manager of the Indian Bank, Coimbatore Corporation Extension branch, were examined and Ex.P.1 to Ex.P.6 were marked.

4.P.W.1 is the complainant, who would depose what he had narrated in the complaint. P.W.2 is the Indian Bank manager, in whose bank the accused is having his current account, would depose that Ex.P.1-cheque was issued to the accused along with the cheque book and when the impugned cheque Ex.P.1 was forwarded to their bank for collection on 4.9.1997, as there is no sufficient funds except Rs.1,628/- as on 4.9.1991, the said cheque was returned with an endorsement that there is no sufficient funds in the account of the accused to honour the same. Ex.P.6 is the statement of accounts relating to the current account of the accused.

5.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused would deny his complicity with the crime. He has examined one Johnsan as D.W.1. After going through the evidence both oral and documentary the learned trial judge has come to the conclusion that the complainant has failed to prove that the impugned cheque Ex.P.1 was drawn by the accused only in order to discharge a subsisting liability and that the promissory note under, which a sum of Rs.2,50,000/-, was lend by the complainant and the bank pass book to show that the complainant had sufficient funds to offer Rs.2,50,000/- by way of loan to the accused, has not been produced by the complainant, to fasten the liability under Section 138 of the Negotiable Instruments Act against the accused and accordingly acquitted the accused, which necessitated the complainant to approach this Court by way of this appeal.

6.Now the point for determination in this appeal is whether the findings of the learned trial judge is perverse in nature to warrant any interference from this Court?

7.The Point:- Thirumathi.S.Thamizharasi learned counsel appearing for the appellant would represent that the judgment of the trial Court is perverse in nature and there is no sufficient grounds given in the judgment for rejecting the complaint. Even though the complainant has not produced the promissory note executed by the accused in favour of the complainant, the complainant had produced Ex.P.1-impugned cheque drawn by the accused in favour of the complainant, which is an essential and important document in a case filed under Section 138 of the Negotiable Instruments Act. The case of the complainant has been proved by examining P.W.1 and also by examining P.W.2 and by way of producing Ex.P.1 to Ex.P.6 documents. In the reply notice the defence taken by the accused is that he has partially discharged the loan. But he has not given any receipt for the same and according to the accused only Rs.20,000/- balance is to be paid by him. In the reply notice he has not mentioned anything about the forgery of his cheque, but he would admit that the impugned cheque

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was given to the complainant only by way of security. Under such circumstances, I am of the view that the reasoning assigned by the learned trial judge for dismissing the complaint cannot be sustainable. Point is answered accordingly.

8.In fine, the appeal is allowed and the judgment in C.C.No.26 of 1998 on the file of the Judicial Magistrate No.II, Coimbatore, is set aside and the case is remanded to the trial Court for fresh disposal accordingly to law. Parties are at liberty to let in fresh evidence. The trial Court need not be carried away by any of the observation made by this Court in this appeal. The trial Court is directed to dispose of the matter within two months from the date of receipt of a copy of this order.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Judicial Magistrate No.II, Coimbatore.

2.-do-The Chief Judicial Magistrate, Salem.

Copy to
The Section Officer,
Crl Section, High Court, Madras

+ One cc to Ms. S.Thamizharasi, Advocate sr no. 46558

NSM(Co)
NM(08.08.07)

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